

2004 LSBC 03

Report issued: February 16, 2004

Citations issued: October 28, 2003 and
December 18, 2003

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

MARLYNE JOY O'DWYER

Respondent

**Decision of the Hearing Panel
on Facts and Verdict**

Hearing date: February 2, 2004

Panel: Patricia L. Schmit, Q.C., Chair, John J.L. Hunter, Q.C., Gavin H.G. Hume, Q.C.

Counsel for the Law Society: Luisa Hlus

Counsel for the Respondent: Michael Ranspot

Background

[1] On October 28, 2003 a citation was issued to the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society, pursuant to the direction of the Chair of the Discipline Committee. The citation to which an amended Schedule is attached, directed that the Hearing Panel inquire into the Respondent's conduct as follows:

1. That you failed to respond promptly or at all to communications from the Law Society, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, as follows:
 - (a) regarding the complaint of V.H., you failed to respond to letters from the Law Society dated July 10, 2003, August 5, 2003, September 9, 2003 and September 15, 2003.
 - (b) regarding the matter of a judgment to Her Majesty the Queen in the Right of Canada in 1999, you failed to reply to letters from the Law Society dated July 15, 2003, August 5, 2003, August 19, 2003, September 9, 2003 and September 15, 2003.
 - (c) regarding the matter of a judgment to Her Majesty the Queen in the Right of Canada entered in 2002, you failed to respond to letters from the Law Society dated July 15, 2003, August 5, 2003, August 19, 2003, September 9, 2003 and September 15, 2003.
 - (d) regarding the matter of a Crown Debt instrument registered by Her Majesty the Queen in the Right of the Province of British Columbia and entered in 2002, you failed to respond to letters from the Law Society dated July 15, 2003, August 5, 2003, August 19, 2003, September 9, 2003 and September 15, 2003.

(e) regarding the matter of an Accountants Report, you failed to respond to letters from the Law Society dated April 8, 2003, May 1, 2003, May 29, 2003, July 3, 2003, August 7, 2003, August 25, 2003, September 9, 2003 and September 15, 2003.

2. That, a judgment having been taken against you by Her Majesty the Queen in the Right of Canada in the amount of \$25,920.67 in 1999, which you did not satisfy within seven days of entry, you failed to advise the Executive Director of the circumstances of the judgment and your proposal for satisfying the judgment, contrary to Rule 3-44(1).

3. That, a judgment having been taken against you by Her Majesty the Queen in the Right of Canada in the amount of \$20,996.09 in 2002, which you did not satisfy within seven days of entry, you failed to advise the Executive Director of the circumstances of the judgment and your proposal for satisfying the judgment, contrary to Rule 3-44(1).

4. That, a judgment in the form of a Crown Debt instrument having been taken against you by Her Majesty the Queen in the Right of the Province of British Columbia in the amount of \$4,640.00 in 2002, which you did not satisfy within seven days of entry, you failed to advise the Executive Director of the circumstances of the judgment and your proposal for satisfying the judgment, contrary to Rule 3-44(1).

5. Your breach of the following practice conditions imposed by three benchers on October 10, 2003 pursuant to Rule 4-17(1)(b) of the *Law Society Rules*:

(a) that you will file a Form 47 accountant's report within 30 days;

(b) that you will respond, within 21 days, to all of your outstanding matters with the Law Society;
and

(c) that you will furnish, within 30 days, a letter from a Trustee in Bankruptcy confirming you have sought debt counseling from that Trustee.

[2] The citation came before this Panel on February 2, 2004.

[3] At the commencement of this hearing, counsel for the Respondent admitted that the requirements of the Rules of the *Legal Profession Act* regarding issuance and service of the citation had been met.

[4] The citation was entered by consent as Exhibit 1.

[5] The Panel was advised that two interim proceedings had taken place regarding the Respondent as follows:

a) On October 10, 2003, a proceeding pursuant to Section 39 of the *Legal Profession Act* and Rule 4-17 of the Law Society Rules took place. At that time a joint proposal made by the Respondent and Law Society counsel imposing 9 conditions upon the Respondent's legal practice was accepted by the Benchers. The Benchers ordered that the Respondent implement those practice conditions.

b) On December 15, 2003 another proceeding pursuant to Section 39 of the *Legal Profession Act* and Rule 4-17 of the Law Society Rules took place at which time the Benchers ordered that the Respondent's right to practice be immediately suspended due to her breach of 3 of the 9 practice conditions imposed upon her on October 10, 2003.

[6] The Panel was advised that on December 16, 2003 a custodian was appointed to manage the

Respondent's law practice.

[7] An Agreed Statement of Facts which includes references to the proceedings recited in paragraph 5 above was filed by consent, as Exhibit 2.

[8] The Agreed Statement of Facts sets out the following:

1. The Respondent became a member of the Law Society of British Columbia in 1993.
2. The Respondent has operated as a sole practitioner out of her office located at 2239B McAllister Avenue in Port Coquitlam since September 1, 2002.
3. On November 20, 1998, Revenue Canada registered a certificate, deemed to be a judgment, in the Federal Court - Trial Division against the Respondent in the amount of \$25,920.67 (the " First Judgment")
4. On April 27, 1999, the First Judgment was registered in the New Westminster Land Title Office as a charge against an undivided one half interest in property registered in the name of the Respondent.
5. The Respondent indicates that until approximately July 2003, she owed the amount of the First Judgment, and acknowledges that the First Judgment constituted a judgment within the meaning of Rule 3-44(1). The Respondent admits that pursuant to Rule 3-44(1) of the Law Society Rules, she had a professional obligation to report in writing to the Executive Director of the Law Society her failure to satisfy the First Judgment within seven days of its entry. The Respondent admits that her failure to make a report pursuant to Rule 3-44(1) constitutes professional misconduct.
6. On January 28, 2002, Revenue Canada registered a certificate, deemed to be a judgment, the Federal Court - Trial Division against the Respondent in the amount of \$20,996.09 (the " Second Judgment").
7. On February 26, 2002, the Second Judgment was registered in the New Westminster Land Title Office as a charge against an interest in property registered in the name of the Respondent.
8. The Respondent indicates that until approximately January 31, 2004, she owed the amount of the Second Judgment, and acknowledges that the Second Judgment constitutes a judgment within the meaning of Rule 3-44(1). The Respondent admits that pursuant to Rule 3-44(1) of the Law Society Rules, she had a professional obligation to report in writing to the Executive Director of the Law Society her failure to satisfy the Second Judgment within seven days of its entry. The Respondent admits that her failure to make a report pursuant to Rule 3-44(1) constitutes professional misconduct.
9. On September 19, 2002, the Ministry of Provincial Revenue, Collections and Loan Management Branch, filed a Form 17 application to register a Crown Debt pursuant to the *Land Title Act* in the New Westminster Land Title Office against an interest in land registered in the name of the Respondent. Accompanying the Form 17 registration was an affidavit indicating the Respondent is indebted to Her Majesty the Queen in Right of the Province of British Columbia for medical services plan premiums for the period October 1, 1996 to September 30, 2002 in the amount of \$4,640.00 (the " Crown Debt").
10. The Respondent acknowledges that she owes the amount of the Crown Debt, and that the Crown Debt constitutes a judgment within the meaning of Rule 3-44(1). The Respondent admits that pursuant to Rule 3-44(1) of the Law Society Rules, she had a professional obligation to report in writing to the Executive Director of the Law Society her failure to satisfy the Crown Debt within seven days of its entry. The Respondent admits that her failure to make a report pursuant to Rule 3-44(1) constitutes professional misconduct.

11. In 2003, the Law Society corresponded with the Respondent in relation to the First Judgment, the Second Judgment, the Crown Debt, a complaint made to the Law Society by V.H. and an outstanding Form 47 Accountant's Report for the fiscal period ending December 31, 2002. In relation to these matters, the Respondent received letters from the Law Society bearing the following dates: April 8, 2003; May 1, 2003; May 29, 2003; July 3, 2003; July 10, 2003; July 15, 2003 (3 letters); August 5, 2003 (4 letters); August 7, 2003; August 19, 2003 (4 letters); August 25, 2003; September 9, 2003 (5 letters); and September 15, 2003.

12. The letters requested replies of explanation from the Respondent by certain specified dates.

13. On October 2, 2003, a citation was directed to be issued against the Respondent for failing to respond to the Law Society's correspondence, as well as for failing to provide a written report to the Law Society in connection with the First Judgment, the Second Judgment and the Crown Debt. The citation was issued on October 28, 2003.

14. The Respondent admits that her failure to respond with the deadlines set out on the letters constitutes professional misconduct.

15. On October 10, 2003, three Benchers convened pursuant to s. 39 of the *Legal Profession Act* and Rule 4-17(1) of the Law Society Rules to consider whether the Respondent's right to practice should be suspended or made the subject of conditions. On November 3, 2003, a written decision was issued setting out the Benchers' October 10, 2003 judgment to impose conditions on the Respondent's continued practice (the "Conditions").

16. On December 2, 2003, the Respondent wrote the Law Society indicating she had resolved the complaint of V.H.

17. On the basis of the Respondent's response, the Law Society closed the investigation of the complaint of V.H. as resolved.

18. On December 2, 2003, the Law Society wrote to the Respondent seeking a further written response concerning the outstanding accountant's report.

19. On December 3, 2003, a citation was directed to be issued against the Respondent alleging a breach of three of the Conditions. The citation was issued on December 18, 2003.

20. The Respondent has dealt with the Conditions in the following manner:

a) A Practice Supervision Agreement was executed on October 22, 2003. The practice supervisor Norman Einarsson reported to the Law Society on November 5, 2003 and again on December 9, 2003.

b) The Respondent arranged for her physician Dr. Stewart to prepare a short form medical report on or before October 21, 2003. Due to an apparent error on the part of Dr. Stewart or his office, the Law Society did not receive the medical report until December 3, 2003.

c) The Respondent indicates that she is in compliance with Dr. Stewart's prescription medication regime.

d) The Respondent indicates that she is in compliance with Mr. LeCroix's recommendations and attends Lawyers' Assistance programs.

e) The Respondent admits that she has failed to file a Form 47 Accountant's Report within 30 days, that is, by November 9, 2003, or at all, and that her failure to do so was a breach of one of the

Conditions and constitutes professional misconduct.

f) The Respondent admits that she failed to bring her practice accounting records up to date by November 9, 2003. The court appointed custodian of the Respondent's practice has retained an accounting firm which is in the process of bringing them up to date.

g) On November 10, 2003, the Law Society received a letter from the Respondent respecting the complaint of V.H., the First Judgment, the Second Judgment, the Crown Debt, and the outstanding accountant's report. The Respondent admits that her failure to respond to the Law Society by October 31, 2003 was a breach of one of the Conditions and constitutes professional misconduct.

h) On December 10, 2003, a trustee in bankruptcy wrote to the Law Society confirming the Respondent had sought and obtained debt counseling. The Respondent admits that her failure to ensure the Law Society received the trustee's letter by November 9, 2003 was a breach of one of the Conditions and constitutes professional misconduct.

i) The Respondent's practice review is scheduled to commence on February 18, 2004.

22. On December 15, 2003, three Benchers convened pursuant to s. 39 of the *Legal Profession Act* and Rule 4-17(1) of the Law Society Rules and suspended the Respondent's right to practice law as of December 15, 2003, pending resolution of the citation. to consider whether the Respondent's right to practice should be suspended or made the subject of conditions.

[9] Attached to the Agreed Statement of Facts were numerous documents which are not reproduced here, but were filed as part of Exhibit 2.

[10] A letter from the Respondent's conveyancing lawyer to the Law Society's counsel was marked as Exhibit 3. The letter confirms that part of the funds from the sale were used to pay off in their entirety two Judgments due Canada Customs and Revenue Agency. These judgments form the substance of Counts 2 and 3 of the Amended Schedule to the Citation Exhibit 1. The balance of the funds was applied to pay off a portion of a third Judgment due Her Majesty the Queen in Right of the Province of British Columbia, which forms the substance of Count 4 of the Amended Schedule to the Citation.

[11] No other evidence was called by either counsel for the Law Society or counsel for the Respondent.

[12] Counsel for the Law Society submitted that upon the facts agreed to, a verdict of professional misconduct was warranted. Counsel for the Respondent agreed.

[13] The Panel finds that the facts in the Agreed Statement of Facts are proven and that the Counts set out in the Citation have been made out.

[14] The Panel finds the Respondent guilty of professional misconduct.

[15] Counsel for the Respondent sought an adjournment of the Penalty stage of the hearing to a date after the report from the Respondent's Practice Review was expected to be available. Law Society counsel did not disagree with this proposal.

[16] Accordingly the hearing as to Penalty has been adjourned to April 8, 2004.